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January 4, 2019

VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

**RE: Renewable Power Purchase Agreement between South Carolina Electric
& Gas Company and Kapstone Charleston Kraft LLC
Docket No. 2019 - ____ - E**

Dear Ms. Boyd:

South Carolina Electric & Gas Company ("SCE&G"), in compliance with and pursuant to Public Service Commission of South Carolina ("Commission") Order Nos. 81-214 and 85-347 issued in Docket No. 80-251-E, hereby submits to the Commission for review the attached renewable Power Purchase Agreement ("Renewable PPA") between SCE&G and Kapstone Charleston Kraft LLC ("Kapstone"). SCE&G and Kapstone entered into the Renewable PPA effective December 26, 2018. For the reasons stated herein, SCE&G respectfully requests that the Commission accept the Renewable PPA for filing because the terms of the Renewable PPA comply with the intent of the Public Utility Regulatory Policies Act of 1978 ("PURPA") and the provisions of Commission Order Nos. 81-214 and 85-347. A summary of the key terms and provisions of the Renewable PPA is set forth below.

Kapstone is a Delaware limited liability company that owns and operates a cogeneration electric generating facility ("Kapstone Facility") at its paper mill in North Charleston, South Carolina, pursuant to an Asset Sale Agreement entered into with SCE&G on December 20, 2018. The Kapstone Facility will be classified as a qualifying facility under the rules and regulations of the Federal Energy Regulatory Commission, promulgated pursuant to the provisions of Section 210 of PURPA, 16 U.S.C. § 2601, *et seq.*

The Renewable PPA is consistent with the intent of PURPA to encourage the development of qualifying facilities for cogeneration and with the principles which the Commission has established in its orders implementing PURPA. See Order Nos. 81-214, 85-347, and 89-56, all issued in Docket No. 80-251-E. Accordingly, the terms of the Renewable PPA are consistent with the public interest. Based on the foregoing,

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SCE&G respectfully requests that the Commission accept the Renewable PPA for filing and issue an order to that effect. **See Commission Order No. 81-214 at 18-19, Section III, paragraphs 3-5 and Order No. 85-347 at 29-30, Section II, Part J, and at 35-36, Section III, paragraphs 11-12.**

By copy of this letter, we are providing the South Carolina Office of Regulatory Staff ("ORS") with a copy of the Renewable PPA for its records.

Thank you for your assistance and consideration of this matter. If you have any questions, please do not hesitate to contact us at your convenience.

Very truly yours,



Matthew W. Gissendanner

MWG/kms
Enclosure

cc: Dawn Hipp
Jeffrey M. Nelson, Esquire
(both via electronic and U.S. First Class Mail w/enclosure)

**THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO
THE FEDERAL ARBITRATION ACT, 9 U.S.C. §§ 1, *ET SEQ.* OR
ALTERNATIVELY THE SOUTH CAROLINA UNIFORM ARBITRATION
ACT, S.C. CODE §§ 15-48-10, *ET SEQ.***

**POWER PURCHASE AGREEMENT FOR NON-FIRM ENERGY FROM A QUALIFYING
FACILITY**

This POWER PURCHASE AGREEMENT FOR NON-FIRM ENERGY FROM A QUALIFYING FACILITY ("**Agreement**") is made and entered into this 26th day of December, 2018, by and between South Carolina Electric & Gas Company ("**SCE&G**" or "**Buyer**"), a corporation organized and existing under the laws of the State of South Carolina, and KapStone Charleston Kraft LLC, a Delaware limited liability company ("**KapStone**" or "**Seller**") and shall be effective as of the Commercial Operation Date (the "**Effective Date**"). Seller and Buyer each may be referred to as a "**Party**" or collectively as the "**Parties**."

RECITALS

WHEREAS, as of midnight (zero hundred hours military time) on January 1, 2019, Seller will own and operate, at its sole cost and expense, a cogeneration electric generating facility (as defined in more detail below, the "**Facility**"), including an electric generator with a nameplate capacity rating of 99.2 MW-AC at a design power factor of eighty five percent (85%) ("**Nameplate Capacity**"), located at its paper mill at 5600 Virginia Avenue, North Charleston, South Carolina, as described in more detail in Attachment A; and

WHEREAS, KapStone and SCE&G have entered into an Asset Sale Agreement, dated December 20, 2018 ("**Asset Sale Agreement**"), whereby SCE&G will sell and KapStone will purchase, effective at 2359:59 hours (Eastern Standard Time) on December 31, 2018, such electric power generator, a 13.8/115 kV generator step-up transformer, and associated equipment and other personal property, which are part of the Facility described herein and located on the property of KapStone situated at 5600 Virginia Avenue, North Charleston, South Carolina ("**North Charleston location**"); and

WHEREAS, KapStone intends to be its own primary supplier of electric energy at its North Charleston location, including for the mill, and have SCE&G act as a secondary backup supplier of such energy under that Retail Power Sales Agreement between Buyer and Seller, dated October 3, 2018 and as may be amended or modified from time to time (the "**Retail Power Sales Agreement**"); and

WHEREAS, KapStone and SCE&G have entered into the Retail Power Sales Agreement, effective as of midnight (zero hundred hours military time) on January 1, 2019, whereby (i) KapStone will pay SCE&G a Substation Facility Charge for, among other things, provision of conductivity between the Facility and KapStone's load at the North Charleston location, and (ii) SCE&G will act as a secondary backup supplier of energy to KapStone for

all load at its North Charleston location, including maintenance power, in excess of the energy delivered to SCE&G's 115 kV system from the Facility ("Net Retail Energy"); and

WHEREAS, KapStone intends to supply its load at its North Charleston location from energy generated by the Facility and sell to SCE&G any energy delivered to SCE&G's 115 kV system from the Facility in excess of KapStone's load at its North Charleston location ("Net Energy", as further defined below); and

WHEREAS, Buyer is willing to purchase and Seller is willing to sell all of the Net Energy of the Facility calculated herein as having been delivered to Buyer at the Delivery Point subject to the terms and conditions and at the prices set forth in this Agreement; and

WHEREAS, Seller has entered into, or will enter into, the separate and necessary agreements for generator interconnection and for transmission service, as required, pursuant to which Seller assumes contractual responsibility for making any and all transmission-related arrangements, including ancillary services as described in such agreements, between Seller and SCE&G Transmission for delivery of the Facility's Energy made available for sale to Buyer; and

WHEREAS, subject to and in a manner consistent with the terms and conditions of this Agreement, the Facility is, or will be, capable of delivering Energy to Buyer for the Term of this Agreement; and

NOW THEREFORE, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I

DEFINITIONS

All references to Articles and Sections are to those set forth in this Agreement. Reference to any document means such document as amended from time to time and reference to either Party includes any permitted successor or assignee thereof. The following definitions and any terms otherwise defined in this Agreement shall apply for all purposes of this Agreement and all notices and communications made pursuant to this Agreement.

"AAA" shall have the meaning provided in Section 14.3(a) hereof.

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls, or is Controlled by, or is under common Control with, such Person.

"Agreement" means this contract, including all Attachments, for the purchase of Net Energy entered into between Seller and Buyer and as may be amended or modified by the Parties from time to time.

"ASC" means the FASB Accounting Standards Codification.

"Asset Sale Agreement" shall have the meaning set forth in the recitals.

"Attachments" mean the schedules and exhibits that are appended hereto and are hereby incorporated by reference and made part of this Agreement. At the Effective Date, such Attachments include:

"Attachment A": Description of Facility

"Attachment B": Schedule of Rates

"Business Day" means any day other than Saturday, Sunday or a legal public holiday as designated in Section 6103 of Title 5, U.S. Code.

"Buyer" or "SCE&G" shall have the meaning provided in the introduction, including any permitted successors and assigns.

"Buyer's Meter(s)" shall have the meaning provided in Section 7.1 hereof.

"Buyer Entities" shall have the meaning provided in Section 12.1 hereof.

"Calendar Year" means the period from January 1 through December 31.

"Commercial Operation" means, for purposes of this Agreement, the period beginning on the Commercial Operation Date and continuing through the Term of this Agreement during which time the Facility is generating Energy for sale to Buyer.

"Commercial Operation Date", for purposes of this Agreement, means the later of midnight (zero hundred hours military time) on January 1, 2019, or when all of the following have been met:

(a) ownership of the electric power generator, the 13.8/115 kV generator **step-up transformer, and associated equipment and other personal property that** comprise the Facility are effectively transferred from Buyer to Seller pursuant to the Asset Sale Agreement, and

(b) Seller has submitted to Buyer a certificate of an officer of Seller familiar with the Facility stating that (i) all Permits, consents, licenses, approvals, and authorizations required to be obtained and maintained by Seller from any **Government Agency** to operate the Facility in compliance with applicable law and this Agreement have been obtained and are in full force and effect, (ii) Seller is in compliance with the terms and conditions of this Agreement and any other applicable contracts in all material respects, and (iii) the Facility has been inspected by Seller and is able to generate and deliver Energy in a manner consistent with **Good Utility Practice**, the Interconnection Agreement, and any other applicable requirements.

"Condition Precedent" refers to any condition precedent listed in Section 4.1 hereof.

"Confidential Information" shall have the meaning provided in Section 15.13 hereof.

"Confidentiality Agreement" means that certain confidentiality agreement entered into and made effective October 9, 2015, between SCE&G and KapStone.

"Control" means the direct or indirect power, whether by contract or through the ownership of capital stock or other equity interests, to elect a majority of such other Person's board of directors or similar governing body, or to direct or cause the direction of management and policies of such Person.

"Cure Period" shall have the meaning provided in Section 11.1(i) hereof.

"Delivery Point" means the point at which the Facility is connected to the Transmission System at the generator side of disconnect switch 5470.

"Demand" shall have the meaning provided in Section 14.3(b).

"Distribution System" means SCE&G's distribution system consisting of electric lines, electric plant, transformers and switchgear used for conveying electricity to ultimate consumers, but not including any part of the Transmission System.

"Effective Date" shall have the meaning provided in the introduction.

"Emergency" means any condition or situation requiring actions or inactions that are reasonably necessary in order to (i) comply with the ERO's Reliability Standards or any other applicable regulation or law, (ii) preserve public health and safety, (iii) limit or prevent damage, or (iv) expedite restoration of service.

"Emergency Condition" means (i) any urgent, abnormal, dangerous, and/or public safety condition that is existing or is imminently likely to result in material loss or damage to the Facility, the Transmission System and/or Distribution System, disruption or generation by the Facility, disruption of service on the Transmission System and/or Distribution System, and/or endangerment to human life or public safety; and, (ii) any circumstance that requires action by the System Operator to comply with the ERO's Reliability Standards, including actions to respond to, prevent, limit, or manage material loss or damage to the Facility, the Transmission System and/or Distribution System, disruption of generation by the Facility, disruption of service on the Transmission System and/or Distribution System, and/or endangerment to human life or public safety. An Emergency Condition will be an excuse to Seller's performance only if such condition is not due to Seller's negligence, willful misconduct, and/or failure to perform as required under this Agreement and/or its Interconnection Agreement, including, without limitation, failure to perform in accordance with Good Utility Practice.

"Energy" means the amount of electrical energy (including capacity, ancillary services associated with such electrical energy and capacity, and all current and future

defined characteristics that count toward resource adequacy or reserve requirements) either used or generated over a period of time, expressed in terms of kilowatt-hour (kWh) or megawatt-hour (MWh) and produced by a cogeneration electric generating facility. For purposes of this Agreement, "Energy" shall also include all electrical products produced by or related to the Facility, including spinning reserves, operating reserves, balancing energy, regulation service, ramping capability, reactive power and voltage control, frequency control and other ancillary or essential reliability service products, or any benefit Buyer otherwise would have realized from or related to the Facility if Buyer rather than Seller had constructed, owned or operated the Facility, it being the Parties' intent that all such benefits and entitlements in addition to electrical output that flow to the owner or operator of the Facility, whether existing as of the Effective Date or at any time during the Term, belong to Buyer at no additional cost to Buyer in connection with the sale of Net Energy to the Buyer. The term Energy shall exclude environmental attributes and any and all state and federal production tax credits, any investment tax credits, tax incentives, or tax grants, and any other tax credits, tax incentives or tax grants which are or will be generated or earned by the Facility.

"Environmental Liability" means all loss, damage, expense, liability and other claims, including court costs and reasonable attorney fees arising out of or relating to the existence at, on, above, below or near the Facility of any Hazardous Substance.

"ERO" means the North American Electric Reliability Corporation and its successor, if any.

"Event of Default" means any of the events listed in Section 11.1 hereof.

"Evergreen Year" shall have the meaning provided in Section 3.1(a) hereof.

"Facility" means the cogeneration electric generating facility operated pursuant to this Agreement, as described in more detail in Attachment A, and all equipment used to produce the electric energy generated at such cogeneration electric generating facility and being sold under this Agreement as Net Energy, including but not limited to, all facilities necessary to connect to the Delivery Point and produce the Net Energy being sold under this Agreement, and all equipment that is owned or controlled by Seller required for parallel operation with the Transmission System. For the avoidance of doubt, the Facility does not include the equipment or facilities constituting Seller's paper mill at the North Charleston location which are not part of the process to produce Energy (including the Net Energy sold to Buyer hereunder) from the cogeneration electric generating facility.

"Facility Premise" means the real property, as more particularly described in the Attachment A hereto, on which the Facility will be located.

"FASB" means the Financial Accounting Standards Board.

"FERC" means the Federal Energy Regulatory Commission.

"Financing Party" means the Persons (including any trustee or agent on behalf of such Persons) providing financing or refinancing to or on behalf of Seller for the testing, commissioning, operation or maintenance of the Facility (whether limited recourse, or with or without recourse).

"Force Majeure" shall have the meaning provided in Section 10.1 hereof.

"Good Utility Practice" means any of the practices, methods, standards and acts, (including, but not limited to, the practices, methods and acts engaged in or approved by a significant portion of owners and operators of power plants in the United States that have the technology, complexity and size similar to the Facility) that, at a particular time in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, could have been expected to accomplish the desired result and goals (including such goals as efficiency, reliability, economy and profitability) in a manner consistent with applicable facility design limits and equipment specifications and applicable laws and regulations. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be generally accepted and consistently adhered to acceptable practices, methods or acts relevant to the activity and facts in question.

"Government Agency" means the United States of America, or any state or any political subdivision thereof, including without limitation, any municipality, township or county, and any domestic entity or body exercising executive, legislative, judicial, regulatory, administrative functions of or pertaining to government, including, without limitation, any corporation or other entity owned or controlled by any of the foregoing, any court of competent jurisdiction, or commission or governmental or regulatory authority or instrumentality or authorized arbitral body.

"Hazardous Substance" means any chemical, waste, or other substance (i) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to environmental health, safety or welfare, (ii) which is declared to be hazardous, toxic, or polluting by any Government Agency, (iii) exposure to which is now or hereafter prohibited, limited or regulated by any Government Agency, (iv) the storage, use, handling, disposal or release of which is restricted or regulated by any Government Agency, or (v) for which remediation or cleanup is required by any Government Agency.

"Indemnified Party" shall have the meaning provided in Section 12.1 hereof.

"Indemnifying Party" shall have the meaning provided in Section 12.1 hereof.

"Interconnecting Utility" means that utility (which in this case shall be SCE&G) providing interconnection service for the Facility to the Transmission System or Distribution System of that utility.

"Interconnection Agreement" means an agreement between the Interconnecting Utility providing interconnection service for the Facility to the Transmission System or Distribution System of the Interconnecting Utility, as the same may be amended from time to time.

"Interconnection Condition" means that Seller has entered into and executed the Interconnection Agreement for the Nameplate Capacity of the Facility.

"Interconnection Facilities" means all facilities and equipment between the Facility and the Delivery Point, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Facility to the Transmission System or Distribution System.

"Interest Rate" shall have the meaning given to it in Section 8.1(d).

"Nameplate Capacity" shall have the meaning set forth in the recitals.

"Net Energy" means, for the period of time being considered, the actual metered Energy output of the Facility delivered to the Delivery Point in excess of KapStone's concurrent total metered energy usage at its North Charleston location, calculated on a 15 minute interval basis using loss adjusted meter values. Specifically, Net Energy will be calculated as follows using the Net Retail Energy calculation as specified in the Retail Power Sales Agreement:

- (i) Net Retail Energy (in kWh) is determined by SCE&G in accordance with the Retail Power Sales Agreement, including Article 5, Article 7, Appendix D, and Appendix E thereof, on a 15 minute interval basis from metering that exists as described therein. The calculation of Net Retail Energy pursuant to the Retail Power Sales Agreement uses loss adjusted meter values and excludes the load of Ingevity South Carolina LLC ("Ingevity"), an entity that receives electric service from SCE&G, jointly owns the private distribution system with KapStone at the North Charleston location, and has load that is independently metered by SCE&G through two (2) meters that are downstream from and in series with the meters measuring KapStone's load.
- (ii) When Net Retail Energy for any 15 minute interval is positive or zero, Net Energy is zero.
- (iii) When Net Retail Energy for any 15 minute interval is a negative value, Net Energy is the absolute value of such negative Net Retail Energy value so long as such Energy output of the Facility is delivered to the Delivery Point concurrently with the related metered usage of the North Charleston location.
- (iv) The Net Energy values (in kWh) for the four 15 minute intervals in each hour shall be summed to determine the hourly Net Energy value and multiplied by the Net Energy Rate to determine the payment to be made to the Seller.

"Net Energy Rate" has the meaning assigned to it in Attachment B.

"Notice of Completion" shall have the meaning provided in Section 4.2 hereof.

"Other Power Sales to SCE&G" means any other Energy sold to Buyer by Seller pursuant to a separate agreement during the Term of this Agreement which, by agreement of both Parties, is to be excluded from Net Energy sold to Buyer by Seller pursuant to the Terms of this Agreement.

"Party" and "Parties" shall have the meanings assigned to it in the Preamble.

"Permit" means all state, federal and local authorizations, certificates, permits, licenses and approvals required by any Government Agency for the operation and maintenance of the Facility.

"Person" means an individual, partnership, corporation, association, joint stock company, trust, joint venture, unincorporated organization, or Government Agency (or any department, agency, or political subdivision thereof).

"Public Service Commission of South Carolina" or "SCPSC" shall mean the Public Service Commission of South Carolina or any successor state agency vested with the power and jurisdiction to supervise and regulate the rates and service of South Carolina Electric & Gas Company or its successor.

"PURPA" means the Public Utility Regulatory Policies Act of 1978.

"Qualifying Facility" or "QF" means a cogenerator, small power producer, or non-utility generator that has been certified by or self-certified with the FERC as meeting certain ownership, operating and efficiency criteria established by the FERC pursuant to the PURPA, the criteria for which are currently set forth in 18 C.F.R. § 292, et seq. (2006), Section 210 of PURPA, 16 U.S.C. § 824a-3 (2005), 16 U.S.C. 796, et seq. (2006), and Section 1253 of EPAct 2005, Pub. L. No. 109-58, § 1253, 119 Stat. 594 (2005) or, alternatively, analogous provisions under the laws of the State of South Carolina.

"Regulatory Event" shall have the meaning provided in Section 15.19 hereof.

"Reliability Standards" mean the reliability standards of the ERO.

"Replacement Agreement" shall have the meaning provided in Section 3.1(a) hereof.

"Representatives" shall have the meaning provided in Section 15.13 hereof.

"Requirements of Law" means any federal, state, and local law, statute, regulation, rule, code, ordinance, resolution, order, writ, judgment, common law, decree or Permit enacted, adopted, issued or promulgated by any Government Agency.

"Retail Power Sales Agreement" shall have the meaning set forth in the recitals.

"SCE&G Transmission" means the Electric Transmission Department of SCE&G.

"SCE&G's Open Access Transmission Tariff" or "OATT" means the OATT of SCE&G on file with the FERC.

"Seller" shall have the meaning provided in the introduction, including any permitted successors and assigns.

"Seller Entities" shall have the meaning provided in Section 12.1 hereof.

"Seller's Meter(s)" shall have the meaning provided in Section 7.1 hereof.

"System Operator" means the operators of the Transmission System and/or Distribution System that have the responsibilities for ensuring that the Transmission System and/or Distribution System as a whole operates safely and reliably, including without limitation, the responsibilities to balance generation supply with customer load and provide dispatch and curtailment instructions to generators supplying energy to the Transmission System and/or Distribution System, and includes any person or entity delivering any such instruction to Seller.

"System Operator Instruction" means any order, action, requirement, demand, or direction from the System Operator using Good Utility Practice delivered to Seller in a non-discriminatory manner to operate, manage, and/or otherwise maintain safe and reliable operations of the Transmission System and/or Distribution System, including, without limitation, those undertaken and implemented by the System Operator, but in its sole discretion based on relevant Transmission System and/or Distribution System factors and considerations (including any and all operating characteristics, maintenance requirements, operational limitations, reliability (including, without limitation, standing ERO regulations), safety, dispatch, constraints, discharge, emissions limitations, compliance requirements, communications, resource ramp-up and ramp-down constraints and implementation, and any other Transmission System and/or Distribution System considerations), which by way of example, if meeting the criteria above, may include, without limitation, an order or action to: (i) ~~interconnect, disconnect, integrate, operate in parallel, or synchronize~~ with the Transmission System and/or Distribution System, as applicable, (ii) increase (based on generator characteristics and Good Utility Practice), reduce or cease generation output to comply with standing ERO regulations; (iii) perform or cease performing any activity so as to operate in accordance with Transmission System and/or Distribution System limitations, including, without limitation, operational constraints that would require the System Operator to force offline or reduce generation output from reliability must-run generation to accommodate generation by the Facility; and, (iv) suspend or interrupt any operational activity for an Emergency Condition or Force Majeure event; provided, however, a System Operator instruction in response to an Emergency Condition or Force Majeure event relating specifically to the Facility shall be deemed to be non-discriminatory.

"Term" shall have the meaning provided in Section 3.1(a) hereof.

"Termination Date" shall mean the effective date of any termination of this Agreement pursuant to its terms.

"Termination Notice" shall have the meaning provided in Section 11.2(a) hereof.

"Transmission System" means SCE&G's system of electric lines comprised wholly or substantially of high voltage lines, associated system protection, system stabilization, voltage transformation, and capacitance, reactance and other electric plant used for conveying electricity from a generating station to a substation, from one generating station to another, from one substation to another, or to or from the Delivery Point or to ultimate consumers and shall include any interconnection owned by SCE&G, but shall in no event include any lines that SCE&G has specified to be part of the Distribution System except for any distribution facilities required to accept Net Energy from the Facility.

"Variable Integration Costs" shall have the meaning given to it in Section 5.2(b).

ARTICLE II

FACILITY DESCRIPTION AND QUALIFYING FACILITY STATUS

2.1 Facility Description and Generation Capabilities. A detailed description of the Facility, including, inter alia, its location, technology, Nameplate Capacity, and net output (MW), is set forth in Attachment A. A scaled map and drawings that identify the Facility Premises, the location of the Facility on the Facility Premises, the location of the Delivery Point and the location of all meters and related measuring equipment, monitoring system, and other important ancillary facilities and Interconnection Facilities are included in Attachment A.

2.2 Facility Specifications. Seller, at its sole expense, will maintain, provide security for, operate and repair the Facility (a) according to Good Utility Practice; and (b) to meet the requirements of this Agreement, including but not limited to the Nameplate Capacity and those other specifications listed on Attachment A. Seller shall not expand the Nameplate Capacity without Buyer's consent, which shall not be unreasonably withheld, conditioned, or delayed.

2.3 Maintenance of Facility's Status. Seller shall maintain the status of the Facility as a Qualifying Facility and a "topping-cycle cogeneration facility" as defined in 18 CFR (s) 292.202(d) throughout the Term of this Agreement. Seller shall at all times keep Buyer informed of any material changes in its business that affects its status as a Qualifying Facility. Buyer shall have the right, upon reasonable notice of not less than twenty-four (24) hours (and immediately, subject to the terms below, in the case of an Emergency), to read meters, to inspect the Facility and to examine any books, records, or other documents and take any other actions reasonably deemed necessary to perform and/or verify compliance under this Agreement. In the event of an Emergency impacting Buyer's system that occurs at or near the Facility, Buyer shall make reasonable efforts to notify the Seller

and make arrangements for an emergency inspection. On or before March 31 of each year during the Term of this Agreement, Seller shall provide Buyer a certificate signed by an officer of Seller certifying that the Facility has continuously maintained its status as a Qualifying Facility during the prior Calendar Year.

ARTICLE III

TERM, PURCHASE AND SALE

3.1 Term.

(a) The term of this Agreement shall commence on the **Effective Date** and shall continue for one year (the "**Term**"). The Term shall automatically continue in additional yearly increments ("**Evergreen Year(s)**") unless terminated by either Party by giving thirty (30) days prior written notice to the other Party in advance of the end of the then existing Term, with such termination to be effective at the end of the then existing Term. If the Retail Power Sales Agreement entered into by the Parties is not terminated contemporaneously with any such termination of this Agreement, then, consistent with the then current PURPA requirements and/or market conditions at the effective date of such termination, the Parties agree to work in good faith to enter into a new power purchase agreement ("**Replacement Agreement**") effective upon termination of this Agreement and remaining in place through the term of the Retail Power Sales Agreement entered into by the Parties, or until such Replacement Agreement is superseded by subsequent Replacement Agreement(s) remaining in place through the term of the Retail Power Sales Agreement. Buyer's obligation to purchase the Net Energy delivered by the Facility as set forth herein shall be effective on the **Commercial Operation Date**.

(b) If the Retail Power Sales Agreement terminates prior to any established or potential termination of this Agreement, or any applicable Replacement Agreement, this Agreement, or any applicable Replacement Agreement, shall terminate concurrently with the termination of the Retail Power Sales Agreement subject to Section 15.18.

3.2 Purchase and Sale.

Buyer agrees to accept delivery of all Energy from the Facility at the **Delivery Point** and purchase the entire Net Energy of the Facility delivered during the Term subject to the terms of this Agreement. Seller agrees to sell to Buyer the entire Net Energy of the Facility during the Term and acknowledges that Buyer is entitled to receive all Net Energy from the Facility during the Term. Title to and risk of loss for the Net Energy shall transfer from Seller to Buyer at the **Delivery Point**. Seller warrants that it will deliver to Buyer the Net Energy at the **Delivery Point**, free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person.

(a) Seller will not commence initial delivery of Net Energy to the **Delivery Point** without the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned, or delayed.

3.3 Net Energy Rate. Buyer shall pay Seller for the Net Energy delivered to Buyer at the Net Energy Rate for the applicable period in which service is provided as set forth in Attachment B. Seller and Buyer agree that the Net Energy Rate is intended to compensate Seller for all of the Net Energy of the Facility delivered to Buyer.

3.4 Generator Interconnection and Transmission Service. Seller shall enter into the necessary agreements for generator interconnection, as required, with SCE&G Transmission, and Buyer shall make any transmission-related arrangements for delivery of the Facility's Net Energy from the Delivery Point. Seller is responsible for any transmission losses that occur prior to the Delivery Point.

ARTICLE IV

CONDITIONS PRECEDENT

4.1 Conditions Precedent. Prior to Buyer's obligation to accept Net Energy, Seller shall have satisfied the following Conditions Precedent:

(a) Seller shall have obtained and/or maintained all necessary Permits to own and operate the Facility in accordance with this Agreement;

(b) Seller shall have complied with Article IX;

(c) By Seller's efforts, the Facility shall have been certified by or self-certified with the FERC as a Qualifying Facility;

(d) Seller shall have satisfied the Interconnection Condition; and

(e) Seller shall have successfully completed the purchase of and taken ownership of the Facility pursuant to the Asset Sale Agreement.

4.2 Reasonable Efforts, Notice of Completion. Upon satisfaction of all Conditions Precedent set forth in Section 4.1, Seller shall provide a written acknowledgment to Buyer ("Notice of Completion") stating and affirming that (i) the Facility has delivered or is ready to deliver Energy as provided in this Agreement; (ii) all Interconnection Facilities are in conformance and accordance with the terms and conditions of this Agreement and the Interconnection Agreement and are available to receive Energy from the Facility; and (iii) all Conditions Precedent set forth in Section 4.1 have been satisfied. The Notice of Completion shall also include the anticipated Commercial Operation Date. Seller shall also give written notice to Buyer when the Commercial Operation Date has occurred.

ARTICLE V

OBLIGATIONS OF THE PARTIES

SELLER'S OBLIGATIONS

5.1 Operation of the Facility. Seller shall:

(a) Seek, obtain, maintain, comply with and, as necessary, renew, and modify from time to time, at Seller's sole expense, the Permits and all other permits, certificates or other authorizations which are required by any applicable laws or Government Agencies as prerequisites to engaging in the sale of Net Energy at the Delivery Point as envisioned by the Agreement and to meeting Seller's obligation to operate the Facility consistently with the terms of the Agreement.

(b) At Seller's sole expense, operate and maintain, provide security for and repair the Facility in accordance with this Agreement and Good Utility Practice.

(c) At Seller's sole expense, comply with Article IX.

(d) Comply with all directives of SCE&G Transmission pursuant to the applicable agreements for generator interconnection and transmission service, and cooperate with all reasonable requests by Buyer relating to Buyer's compliance with any such directives relating to deliveries of Energy from the Facility. The Parties recognize that Seller's compliance with any such directives of SCE&G Transmission due to system conditions on Buyer's Transmission System or Distribution System that require curtailment or interruption of Energy deliveries may result in reduced sales hereunder, without liability on the part of either Party. Notwithstanding the foregoing, Buyer shall have no right to curtail or interrupt Energy deliveries for economic reasons.

(e) Notwithstanding anything in this Article V to the contrary, no payment shall be due to Seller under Section 8.1 with respect to the Energy that is not delivered by Seller to the Delivery Point for any of the following reasons:

(i) delivery of Energy is curtailed through any SCE&G Transmission mechanism or procedure of any sort for redispatch, transmission loading, renewable integration procedures, or any similar or successor operating rules, procedures or systems, and for any other reason, in each case, in compliance with the Interconnection Agreement;

(ii) there is any curtailment by SCE&G Transmission in accordance with the Interconnection Agreement, or by the System Operator (if other than SCE&G Transmission), or otherwise for delivery of the Energy from the Facility, including planned outages for Transmission System network upgrades impacting the Interconnection Facilities;

(iii) an Emergency Condition; or

(iv) an event of Force Majeure.

5.2 General Obligations.

(a) Seller, during the Term of the Agreement, shall pay all present or future federal, state, municipal, or other lawful taxes or fees applicable to Seller, or the Facility,

or by reason of the sale of Net Energy by Seller to Buyer up to and at the Delivery Point under the Agreement, plus all taxes associated with the generation and delivery of the Net Energy sold hereunder to the Delivery Point.

(b) Seller shall be responsible for the payment of all charges that result from any change in any applicable law that occurs after the Effective Date that imposes new or additional (i) obligations on a Party to obtain or provide transmission service or ancillary services prior to the Delivery Point, or (ii) variable integration charges or imbalance costs, fees, penalties, or expenses, or provides benefits that, in the case of either clauses (i) or (ii), are imposed, assessed or credited by the transmission provider based on the impacts of energy generated by variable generation projects generally (collectively, the "Variable Integration Costs"). Seller shall be responsible for all Variable Integration Costs, irrespective of whether the Variable Integration Costs are assessed against Seller or Buyer and, to the extent any Variable Integration Costs are incurred by Buyer, Seller shall promptly reimburse Buyer for such Variable Integration Costs.

(c) Seller shall continue to (i) preserve, renew and keep in full force and effect, to the extent applicable, its organizational existence and good standing, and take all reasonable action to maintain all Permits, rights, privileges, licenses, and franchises necessary in the ordinary course of its business; (ii) comply with all Requirements of Law, and (iii) comply with all material agreements, instruments and undertakings related to the Facility, except to the extent that any failure to so comply has not had, or is not reasonably likely to have, a material adverse effect on Seller's performance of its material obligations under this Agreement.

(d) Upon Buyer's request, Seller shall make available for Buyer's review Permits and other information in its possession, custody or control regarding the permitting, engineering, construction, condition and operations of the Facility (including Seller's QF Certification), as Buyer may, from time to time, reasonably request.

(e) Seller shall indemnify, defend, and hold Buyer harmless from and against all Environmental Liability arising on or accruing after the Effective Date except to the extent that any such Environmental Liability results from the gross negligence or intentional misconduct of Buyer or any of its officers, employees, agents, contractors or subcontractors while at the Facility.

(f) Seller shall indemnify, defend and hold Buyer harmless from and against all losses, liabilities or claims, including reasonable attorneys' fees and court costs, of any and all Persons for personal injury (including death) or property damage arising from or out of the operation of the Facility.

(g) Seller acknowledges that any written notice and information required by Buyer under this Agreement is solely for monitoring purposes, and that nothing contained in this Agreement shall create or impose upon Buyer any responsibility or

liability for the design, development, construction, operation or maintenance of the Facility or Interconnection Facilities.

(h) Notwithstanding any provision of this Agreement to the contrary, Seller agrees that: (a) Buyer shall have no responsibility whatsoever for any costs and/or Taxes relating to the design, development, construction, maintenance, ownership, or operation of the Facility (including but not limited to any financing costs, and any costs and/or Taxes imposed by any Government Agency on or with respect to emissions from or relating to the Facility, and including but not limited to costs and/or Taxes related to any emissions allowances inter alia for oxides for sulfur dioxide or nitrogen, carbon dioxide, and mercury), all of which shall be entirely at Seller's sole cost and expense; provided, however, that this subsection (a) is not intended to modify the obligations of the Buyer with respect to events and circumstances occurring prior to the Effective Date: (i) pursuant to the Asset Sale Agreement, (ii) pursuant to Article 13 (and as limited by Article 14), and Section 18.9 of the Shaft Horsepower Agreement, between Cogen South L.L.C. and Buyer dated as of June 1, 1996, as amended, or (iii) pursuant to Article 12, and Sections 25.10 and 25.11 of the Generator Site Sublease between Cogen South L.L.C. and Buyer dated as of June 1, 1996, as amended, except that both Parties agree that the execution and performance of this Agreement by Buyer in accordance with the provisions herein shall not be in violation or breach of any of the aforementioned provisions of the other agreements between Buyer and the Affiliate of Seller, Cogen South L.L.C., and (b) any risk as to the availability of production tax benefits, investment tax credits, grants or any other incentives relating to the development, maintenance, ownership, or operation of the Facility shall be borne entirely by Seller. If any production or investment tax credit, grants, or any similar incentives or benefit relating to the Facility and/or Seller is unavailable or becomes unavailable at any time during the Term of this Agreement, Seller agrees that such event or circumstance will not: (a) constitute a Force Majeure or Regulatory Event; (b) excuse or otherwise diminish Seller's obligations hereunder in any way; or (c) give rise to any right by Seller to terminate or avoid performance under this Agreement. Seller agrees that it will solely and fully bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive any such tax treatment or otherwise qualify for any preferential or accelerated depreciation, accounting, reporting, or tax treatment.

(i) Seller agrees and acknowledges that the Interconnection Agreement is (and will be) a separate agreement between Seller and SCE&G Transmission. Only the Interconnection Agreement will govern all obligations and liabilities set forth in the Interconnection Agreement, and Seller shall be solely and fully responsible for all costs and expenses for which Seller is responsible under the Interconnection Agreement. Notwithstanding any provision in this Agreement, nothing in the Interconnection Agreement, nor any other agreement between Seller on the one hand and SCE&G Transmission on the other hand, nor any alleged event of default thereunder, shall affect, alter, or modify the Parties' rights, duties, obligation, and liabilities hereunder. This Agreement shall not be construed to create any rights between Seller and SCE&G Transmission, and the terms of this Agreement are not (and will not) be binding upon

SCE&G Transmission. Seller agrees and acknowledges that the System Operator will be solely responsible for its functions and that nothing in this Agreement will be construed to create any rights between Seller and the System Operator, and Seller agrees to fully comply with all System Operator Instructions.

(j) Seller shall provide to Buyer all information, instruments, documents, statements, certificates, and records relating to this Agreement and/or the Facility as requested by Buyer concerning any administrative, regulatory, compliance, or legal requirements determined by Buyer to fulfill any Requirements of Law, regulatory reporting requirements or otherwise relating to any request by any Government Agency. Seller shall, at its own expense, provide Buyer with all information requested by Buyer to register, verify, or otherwise validate or obtain any Government Agency approval or any other third party recognition of the Net Energy for use by Buyer, and at Buyer's request Seller shall register, verify, or otherwise validate or obtain any Government Agency approval and/or any other third party recognition of the Net Energy.

5.3 Specific Obligations Related to Operation.

(a) At Buyer's request, Seller shall provide Buyer with "as-built" drawings setting forth in as sufficient detail as required by Buyer in its reasonable discretion, the location of all components of the Facility.

(b) Seller shall purchase from Buyer all station power and energy used by the Facility and not provided by the Facility itself.

(c) The Facility shall remain interconnected with SCE&G's Transmission System in accordance with the requirements for generator interconnection pursuant to the South Carolina Generator Interconnection Procedures, Forms, and Agreements and the Interconnection Agreement.

(d) Following the Commercial Operation Date, Seller and Buyer shall promptly provide to each other information requested by the other Party to verify any amounts of delivered Energy, or to otherwise audit the Energy delivered to Buyer. Seller and Buyer shall provide each other with any other information germane to this Agreement reasonably requested by the other Party.

BUYER'S OBLIGATIONS

5.4 Distribution and Transmission Service. Buyer shall, at its expense, be responsible for obtaining service over the Distribution and/or Transmission Systems to the extent such service is necessary for delivery of Energy of the Facility from the Delivery Point. Buyer shall provide Seller written notice that all essential facilities within Buyer's control are in place and operational prior to Buyer's receipt of Energy.

5.5 Cooperation. Buyer agrees to reasonably cooperate with Seller in any applications for Permits, certificates or other authorizations as described in Section 5.1(b). Buyer's

obligation under this section shall consist only of providing nonproprietary information in its possession, custody or control necessary to complete any applications and responding to requests from the relevant Government Agencies or other Persons.

ARTICLE VI

ELECTRICITY PRODUCTION

6.1 **Forecasting and Availability.** When approved pursuant to the Retail Power Sales Agreement, Seller shall promptly notify Buyer of periods of maintenance for the Facility which impact potential deliveries of Energy during Term of this Agreement.

6.2 **Communication.** Seller and Buyer shall comply with reasonable requests by the other Party regarding day-to-day and hour-by-hour communication between the Parties relative to electricity production and maintenance scheduling.

6.3 **Seller's Plant Personnel.** During the Term, Seller shall employ, or cause a qualified service provider engaged by Seller to employ, qualified personnel for managing, operating and maintaining the Facility and for coordinating with Buyer. Seller shall ensure that operating personnel are available, on site or at a remote monitoring location, at all times, twenty-four (24) hours per calendar day and seven (7) calendar days per week. Additionally, during the Term, Seller shall operate and maintain the Facility in such manner as to ensure compliance with its obligations hereunder and in accordance with applicable law and Good Utility Practice.

ARTICLE VII

METERING

7.1 **Metering Equipment.** The amount of Net Energy delivered to Buyer shall be derived from data measured by the meter(s) and associated telecommunications equipment installed by SCE&G or its affiliates as described in the Retail Power Sales Agreement or pursuant to any agreement between SCE&G Transmission or its affiliates and Seller for interconnection of the Facility ("Buyer's Meter(s)"). Seller shall authorize SCE&G or SCE&G Transmission to provide meter data for Seller to Buyer, and hereby grants Buyer with rights to physically access the Buyer's Meter(s). Seller shall be responsible for paying SCE&G or SCE&G Transmission for all costs relating to the Buyer's Meter(s), if any, including, without limitation, its procurement, installation, operation, calibration, and maintenance. Seller shall ensure in its arrangement with SCE&G Transmission for the Buyer's Meter(s) to include communication equipment that enables Buyer to access and read the meter from a remote location. Seller shall provide Buyer (at Seller's cost, if any) with appropriate telephonic/electronic communication to allow Buyer to remotely read the meter. Except as provided in Sections 7.2 and 7.3, Buyer's Meter(s) shall be used for quantity measurements and billing under this Agreement. Seller, at its sole expense, may install and maintain check meters and all associated measuring equipment necessary to permit an accurate determination of the quantities of Net Energy delivered under this

Agreement; provided, however, that such equipment shall be operated and maintained in a manner that does not interfere with the installation, maintenance, and operation of Buyer's Meter(s).

7.2 Measurements. Readings of Buyer's Meter(s) made by Buyer shall be conclusive as to the amount of Net Energy delivered to Buyer hereunder; provided, however, that if Buyer's Meter(s) is out of service or is determined, pursuant to Section 7.3 hereof, to be registering inaccurately, measurement of Net Energy delivered hereunder shall be determined by, in the following order:

(a) Seller's check meter, if installed, annually tested and registering accurately;
or

(b) In the absence of an installed, annually tested and accurately registering check meter belonging to Seller, making a mathematical calculation if, upon a calibration test of Buyer's Meter(s), a percentage error is ascertainable; or

(c) In the absence of an installed, annually tested and properly registering check meter belonging to Seller, and an ascertainable percentage of error in Buyer's Meter(s), estimating by reference to quantities measured during periods of similar conditions when Buyer's Meter(s) was registering accurately; or

(d) If no reliable information exists as to the period over which Buyer's Meter(s) was registering inaccurately, it shall be assumed for correction purposes hereunder that such inaccuracy began at a point in time midway between the testing date and the last previous date on which such meter was tested and found to be accurate; provided, however, that the deemed period of the inaccuracy shall not exceed one hundred eighty (180) days.

7.3 Testing and Correction. The accuracy of Buyer's Meter(s) shall be tested and verified by Buyer annually. Buyer shall have the right, at its own expense, to test and verify Seller's meter(s) upon reasonable notice, provided such testing shall not exceed one (1) test during a Calendar Year, or more frequently if there is just cause. If Seller has installed check meters in accordance with Section 7.1 hereof, Seller shall test and verify such meters annually. Each Party shall bear the cost of the annual testing of its own meters.

(a) If either Party disputes a meter's accuracy or condition, it shall so advise the meter's owner in writing. The meter's owner shall, within fifteen (15) days after receiving such notice, advise the other Party in writing as to its position concerning the meter's accuracy and reasons for taking such position. If the Parties are unable to resolve their disagreement through reasonable negotiations, either Party may submit such dispute to an unaffiliated third-party engineering company mutually acceptable to the Parties to test the meter.

(b) Should any meter be found to be registering within a one percent (1%) variance, the Party contesting the meter's accuracy shall bear the cost of inspection; otherwise, such cost shall be borne by the meter's owner. Any repair or replacement of

such a meter found to be operating beyond the permitted one percent (1%) variance shall be made at the expense of the owner of that meter as soon as practicable, based on the third-party engineer's report. If, upon testing, any meter is found to be in error by an amount greater than a one percent (1%) variance, such meter shall be repaired or replaced promptly, any previous recordings by such meter shall be adjusted in accordance with Section 7.2, any prior payments made for Net Energy and/or invoices for payments not yet made shall be adjusted to reflect the corrected measurements determined pursuant to Section 7.2. If the difference of the payments actually made by Buyer minus the payment based upon the corrected measurements is a positive number, Seller shall pay the difference to Buyer; if the difference is a negative number, Buyer shall pay the difference to Seller. In either case, the Party paying such difference shall also pay interest as described in Section 8.1(d) for late payments and such payment (including such interest) shall be made within ten (10) days of receipt of a corrected billing statement.

7.4 **Maintenance and Records.** Each Party has the right to be present whenever the other Party tests and/or calibrates the equipment used in measuring or checking the measurement of the Net Energy delivered hereunder. Each Party shall endeavor to give notice to the other Party of five (5) days, but in no event less than forty-eight (48) hours, in advance of taking any such actions. The records from the measuring equipment remain the property of Seller or Buyer, respectively, but, upon request, each Party will provide access to the other, upon reasonable notice and during normal business hours, to review the Party's metering and billing and maintenance records, including supporting documentation, necessary to verify the accuracy of bills. Each Party is permitted to audit such records of the other Party no more frequently than once each Calendar Year.

ARTICLE VIII

BILLING AND PAYMENT

8.1 Billing and Payment.

(a) **Buyer shall read the Buyer's Meter(s) or cause such meter(s) to be read as soon as practicable after the last day of the previous calendar month and shall report the resulting values for the Net Energy delivered for the previous calendar month to Seller.**

(b) **Seller shall create and send an invoice to Buyer based on Buyer's Meter(s) readings and deliveries of Net Energy.**

(c) **Buyer's payment to Seller for Net Energy received shall be paid by electronic funds transfer by the twentieth (20th) of each month or thirty (30) days following Buyer's receipt of Seller's invoice, whichever is later. If such date falls on a weekend or legal holiday, the due date shall be the next Business Day.**

(d) **Payments made after the due date shall be considered late and shall bear interest on the unpaid balance at a rate equal to the average daily prime rate as**

determined from the "Money Rates" section of the Wall Street Journal (the "Interest Rate"), for the days of the late payment period multiplied by the number of days elapsed from and including the due date, to but excluding the payment date. In the event this index is discontinued or its basis is substantially modified, the Parties shall agree on a substitute equivalent index.

(e) If either Party hereto shall find at any time within one (1) year after the date of any payment hereunder that there has been an overcharge or undercharge, the Party finding the error shall promptly notify the other Party in writing. In the event of an undercharge, Buyer, within thirty (30) days of the date of the notice of error, shall pay the amount due plus interest accruing at the Interest Rate from the time of payment of the undercharge through the date of payment correcting the undercharge. In the event of an overcharge, Seller, within thirty (30) days of the notice of error, shall refund the overpayment plus interest accruing at the Interest Rate from the time of payment of the overcharge through the date of payment correcting the overcharge.

(f) Each Party shall have the right, at its sole expense during normal business hours, to examine the other Party's records, but only after prior notice and only to the extent necessary to verify the accuracy of any statement, charge, notice, or computation made hereunder.

ARTICLE IX

INSURANCE REQUIREMENTS

Seller agrees that it will maintain, or cause to be maintained, self-insurance and/or insurance of such types and against such liabilities and hazards, as customarily is maintained by other companies operating similarly sized and situated generation facilities. Seller represents and warrants that it has sufficient assets to reasonably cover any liability set forth in this Agreement. Seller's self-insured coverage applies as if Seller has contracted with a third-party for coverage, including the assumption of defense costs that is given with standard additional insured endorsements. The Seller shall deliver to the Buyer, upon Buyer's written request, a Certificate of Insurance and/or a letter of self-insurance describing the extent of such insurance or self-insurance.

ARTICLE X

FORCE MAJEURE

10.1 Force Majeure. Force Majeure is defined as an event or circumstance that is not reasonably foreseeable, is beyond the reasonable control of and not caused by the negligence or lack of due diligence of the Party claiming Force Majeure or that Party's contractors or suppliers, and adversely affects the performance by that Party of its obligations under or pursuant to this Agreement. Such events or circumstances may include, but are not limited to, actions or inactions of civil or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection,

blockades, embargoes, sabotage, epidemics, explosions and fires not originating in the Facility or caused by its operation, hurricanes, floods, strikes, lockouts or other labor disputes or difficulties (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). However, the obligation to use reasonable diligence shall not be interpreted to require resolution of labor disputes by acceding to demands when such course is inadvisable in the discretion of the Party having such difficulty. Payment of money shall not be excused by Force Majeure.

10.2 Remedial Action. A Party shall not be liable to the other Party to the extent the first Party is prevented from performing its obligations due to an event of Force Majeure. The Party rendered unable to fulfill any obligation by reason of a Force Majeure shall take all reasonable actions necessary to remove such inability with all due speed and diligence. Such partially performing or nonperforming Party shall be prompt and diligent in attempting to remove the cause of its failure to perform. Neither Party shall be required to remedy, in whole or in part, an event of Force Majeure if such remedy is inconsistent with Good Utility Practice. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure. This Agreement may be terminated by the non-claiming Party upon ten (10) days prior written notice to the claiming Party with no further obligation to the Party impacted by Force Majeure if a Force Majeure event prevents the performance of a material portion of the obligations hereunder and such Force Majeure event is not resolved within eight (8) months after the commencement of such Force Majeure event. In the event of such termination, neither Party shall have any further obligation to the other Party under this Agreement except such obligations which have already accrued at termination and/or survive the termination or expiration of this Agreement as provided in Section 15.18.

10.3 Exclusions from Definition of Force Majeure. Notwithstanding anything in the Agreement to the contrary, "Force Majeure" shall not mean:

(a) Inclement weather affecting testing, start-up, or operation of the Facility or related facilities that does not otherwise meet the definition of "Force Majeure;"

(b) Changes in market conditions or governmental action that affect Buyer or Seller, as applicable, the cost of Seller's supply of Energy from the Facility, or the ability of Buyer to obtain energy at a rate lower than the Net Energy Rate and/or other pricing provisions agreed upon by the Parties pursuant to this Agreement;

(c) Equipment breakdown or inability to use equipment caused by its design, construction, operation, maintenance or inability to meet regulatory standards, or otherwise caused by an event originating in the control of a Party;

(d) Unavailability of equipment, repairs or spare parts for the Facility, except to the extent due to a qualifying event of Force Majeure;

(e) Failure to obtain on a timely basis and maintain a necessary Permit or other regulatory approval or any undue delay in obtaining, maintaining, or renewing any Permit; or

(f) Scheduled maintenance on the Distribution System or Transmission System.

10.4 Notice. In the event of any delay or nonperformance resulting from Force Majeure, the Party suffering the event of Force Majeure shall, as soon as practicable after the occurrence of the Force Majeure event but in no event more than forty-eight (48) hours after the commencement of an event of Force Majeure, notify the other Party in writing of the nature, cause, date of commencement thereof, and the anticipated extent of any delay or interruption in performance.

ARTICLE XI

DEFAULT, TERMINATION, REMEDIES

11.1 Events of Default. Each of the following shall constitute an Event of Default:

(a) a Party fails to make when due, any payment required pursuant to this Agreement;

(b) any of the representations, warranties, or covenants made by a Party in this Agreement is false or misleading in any material respect, or not performed as required in a timely manner, and is not cured within the applicable Cure Period;

(c) Seller, or the entity that controls or owns Seller, ceases the conduct of active business; or if proceedings under the federal bankruptcy law or insolvency laws shall be instituted by or for or against Seller or the entity that controls or owns Seller; or if a receiver shall be appointed for Seller or any of Seller's assets or properties, or for the entity that controls or owns Seller; or if any part of Seller's assets shall be attached, levied upon, encumbered, pledged, seized or taken under any judicial process, and such proceedings shall not be vacated or fully stayed within sixty (60) calendar days thereof; or if Seller shall make an assignment for the benefit of creditors; or if Seller admits in writing its inability to pay its debts as they become due;

(d) a Party breaches any provision of the Agreement not specifically enumerated in this Section 11.1, and such breach is not cured within the applicable Cure Period; provided, however, there is no Cure Period for those breaches or Events of Default referenced in Section 11.1(f)(III) below;

(e) a Party fails to maintain in full force and effect any Permit necessary for such Party to perform its obligations under this Agreement;

(f) Except as otherwise provided herein, any defaulting Party shall have the following cure periods to accomplish the cure of any breach before it becomes an Event Default (the "Cure Period"):

(I) For breach of a monetary obligation: ten (10) days following delivery of written notice that a payment is due unless such payment is contested pursuant to Article XIV below; and

(II) For breach of a nonmonetary obligation (other than as provided in Section 11.1(f)(III) below): thirty (30) days following delivery of written notice of such breach; provided, that such defaulting Party shall have an additional period of time to cure such nonmonetary breach so long as the defaulting Party is making a good faith effort to cure the breach, the total cure period not to exceed sixty (60) days in the aggregate.

(III) Notwithstanding anything else herein to the contrary, there is no Cure Period for (A) breaches of the requirements to maintain the status of the Facility as a Qualifying Facility and a "topping-cycle cogeneration facility" as defined in 18 CFR (s) 292.202(d) pursuant to Section 2.3; (B) failure to comply with all directives of SCE&G Transmission pursuant to the applicable agreements for generator interconnection and transmission service, and cooperate with all reasonable requests by Buyer relating to Buyer's compliance with any such directives relating to deliveries of Net Energy from the Facility in accordance with Section 5.1(e); and (C) the Events of Default referenced in Section 11.1(c) above.

(g) Each Party agrees to accept the cure of a breach by a defaulting Party offered by a Financing Party who has provided financing to such defaulting Party; provided that the non-defaulting Party is under no obligation hereunder to notify the Financing Party of any breach or of its ability to cure such breach hereunder.

(h) An Event of Default shall not have occurred hereunder until the proper notice has been delivered and the applicable Cure Period has expired without the breach being cured.

11.2 Remedies for Default.

(a) In the event the defaulting Party fails to cure the Event of Default within the period for curative action, if any, under Section 11.1, the non-defaulting Party may terminate the Agreement by notifying the defaulting Party in writing (the "Termination Notice") of the decision to terminate and the effective date of the termination (the "Termination Date"), and/or exercise all remedies available at law or in equity.

(b) Termination of this Agreement for any reason shall not affect the accrued rights, amounts owed, or other obligations of either Party as of such termination, and the Parties agree that in exercising its legal and equitable remedies in connection with an Event of Default, the non-defaulting Party shall be entitled to collect from the defaulting Party all reasonable costs and expenses (including the reasonable expenses and fees of the non-defaulting Party's counsel).

(c) Buyer shall have the right to refuse delivery of any Energy that does not satisfy any warranties set forth in Section 3.2 or to claim actual damages incurred by Buyer for any such Energy accepted by Buyer without knowledge of its noncompliance. In addition, in the event that Seller shall not be in compliance with Section 5.1(e), Buyer shall have the right to refuse deliveries of Energy immediately without the passage of any applicable Cure Period or grace period.

(d) If an Event of Default of a Party shall wholly or partly affect the performance (or the ability to perform) of the other Party under this Agreement, then any non-performance of the non-defaulting Party shall be excused to the extent affected by the Event of Default.

11.3 LIMITATION OF LIABILITY. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE WAIVED. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFITS, OR BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, CONTRACT, OR OTHERWISE EXCEPT WITH RESPECT TO ANY OF THE FOREGOING DAMAGES THAT ARE INCLUDED IN ANY CLAIM BY A THIRD PARTY FOR WHICH A PARTY IS INDEMNIFIED HEREUNDER.

11.4 Termination for Bankruptcy or Insolvency of Buyer. Notwithstanding anything else herein to the contrary, this Agreement and Buyer's obligations hereunder are contingent upon Buyer's continued financial solvency throughout its Term. The Agreement and Buyer's obligations hereunder shall terminate upon Buyer or an entity that owns or controls Buyer instituting or having instituted against it proceedings under the federal bankruptcy law or other insolvency law; ceasing the conduct of active business; having a receiver appointed for it or its assets or properties; making an assignment for the benefit of creditors; or admitting in writing its inability to pay its debts as they become due. The foregoing shall not constitute an Event of Default. For the avoidance of doubt, upon the occurrence of any of the events triggering termination pursuant to this Section 11.4, Buyer shall have no further obligation to purchase any output (Energy or otherwise) from the Facility.

ARTICLE XII

INDEMNIFICATION

12.1 General. Buyer and Seller shall each be responsible for its own facilities. Buyer and Seller shall each be responsible for ensuring adequate safeguards for third parties, Buyer's and Seller's personnel and equipment and for the protection of its own generating system. Each Party (the "Indemnifying Party") agrees, to the extent permitted by applicable law, to indemnify, pay, defend and hold harmless the other Party (the "Indemnified Party") and its officers, directors, employees, agents and contractors (hereinafter called respectively, "Seller Entities" and "Buyer Entities") from and against any and all claims, demands, costs or expenses for loss, damage, or injury to Persons or property of the Indemnified Party (or to third parties) directly caused by, arising out of, or resulting from:

(a) a breach by the Indemnifying Party of its covenants, representations and warranties or obligations under this Agreement;

(b) any act or omission by the Indemnifying Party or its contractors, agents, servants or employees in connection with the installation or operation of its generating system or the operation thereof in connection with the other Party's system;

(c) any defect in, failure of, or fault related to, the Indemnifying Party's generating system;

(d) the negligence or willful misconduct of the Indemnifying Party or its contractors, agents, servants or employees; or

(e) any other event or act that is the result of, or proximately caused by, the Indemnifying Party or its contractors, agents, servants or employees related to such Party's performance under this Agreement.

12.2 Claims Settlement. Payment by an Indemnified Party to a third party shall not be a condition precedent to the obligations of the Indemnifying Party under this Article XII. An Indemnified Party which becomes entitled to indemnification under this Article XII shall promptly notify the other Party of any claim or proceeding in respect of which it is to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party obligated to give such notice becomes aware of such claim or proceeding. Failure to give such notice shall not excuse an indemnification obligation except to the extent failure to provide notice adversely affects the Indemnifying Party's interests in a material respect. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party; provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party reasonably concludes that there may be legal defenses available to it that are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the expense of the Indemnifying Party. If the Indemnifying Party fails to assume the defense of a claim, the indemnification of which is required under this Agreement, the Indemnified Party may, at the expense of the Indemnifying Party, contest, settle, or pay such claim; provided, however, that settlement or full payment of any such claim may be made only with the Indemnifying Party's consent (which shall not be unreasonably withheld or delayed), or absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. In the event that the Buyer is the indemnified party hereunder, it may draw upon any Performance Assurance to satisfy the unpaid portion of any such indemnity claim. Article XII shall survive termination of this Agreement, as provided in Section 15.18.

ARTICLE XIII

REPRESENTATIONS, WARRANTIES, COVENANTS

13.1 Mutual Representations and Warranties.

(a) Each Party represents and warrants to the other Party that, as of the Effective Date:

(i) it is duly organized or formed, as the case may be, validly existing and in good standing under the laws of the jurisdiction of its organization, incorporation or formation;

(ii) it has the power to execute and deliver this Agreement and to perform its obligations under this Agreement and has taken all necessary corporate, limited liability company, partnership, governmental and/or other actions to authorize such execution and delivery and performance of such obligations;

(iii) its execution and delivery of this Agreement and its performance of its obligations under this Agreement do not violate or conflict with any law applicable to it; with any provision of its charter or bylaws (or comparable constituent documents); with any order or judgment of any court or other agency of government applicable to it or any of its assets; or with any contractual restriction binding on or affecting it or any of its assets;

(iv) except as provided in Sections 15.16 and 15.17, all authorizations of and exemptions, actions or approvals by, and all notices to or filings with, any Government Agency that are required to have been obtained or made by it at the time this representation is made with respect to this Agreement have been obtained or made and are in full force and effect, and all conditions of any such authorizations, exemptions, actions or approvals have been complied with; and

(v) this Agreement constitutes the Party's legal, valid and binding obligation, enforceable against it in accordance with its terms.

13.2 Seller's Representations, Warranties, and Covenants.

(a) Seller represents and warrants to Buyer that the Facility and all related facilities have been operated in accordance with Good Utility Practice and the specifications listed on Attachment A.

(b) Seller represents and warrants to the Buyer that, as of the Effective Date of the Agreement, Seller has not received any notice from any Governmental Agency or third party of any alleged violations of any environmental law or permit that would materially and adversely affect the operation of the Facility as contemplated by this Agreement.

(c) Seller represents and warrants that it has sole title to the Facility as of the Commercial Operation Date and except as provided in Sections 15.1(b) and 15.1(d) below, that the Facility is and will remain throughout the Term of the Agreement free and clear of all liens, claims, encumbrances and third-party rights of any kind other than liens for taxes which are not yet due and payable and otherwise in accordance with Section 15.1(d) below.

(d) Seller represents and warrants that the Facility is and Seller covenants that the Facility shall remain at all times during the Term, a Qualifying Facility, and a "topping-cycle cogeneration facility" as defined in 18 CFR (s) 292.202(d).

(e) Seller covenants that throughout the Term, no modifications to, or expansion of, the Facility that would have a material adverse effect on Buyer's rights or obligations under this Agreement will occur without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

(f) Seller covenants that throughout the Term, Seller, or assign(s) pursuant to Section 15.1 of this Agreement, will maintain the legal right to and will possess and operate the Facility and deliver Net Energy to Buyer in accordance with the provisions of this Agreement.

13.3 No Implied Warranties. Except as expressly set forth in this Agreement, Seller makes no representations or warranties concerning Net Energy delivered under this Agreement. Seller expressly disclaims any implied warranties of merchantability or fitness for a particular purpose.

ARTICLE XIV

DISPUTE RESOLUTION

14.1 General. It is the intent of the Parties that all breaches of this Agreement or disputes arising out of this Agreement shall be resolved in accordance with the dispute resolution procedure set forth in this Article XIV.

14.2 Informal Resolution. If any such breach or dispute arises between the Parties, then either Party may provide written notice thereof to the other Party, which shall include a detailed description of the subject matter of the dispute. Each Party shall promptly designate a senior executive who shall have authority to resolve the dispute through negotiations. The senior executives shall obtain such information as may be necessary to inform themselves of the substance and particulars of the dispute, provided that no document discovery or depositions shall be required during negotiation and any document exchange shall be voluntary. The negotiation and any documents exchanged in connection with the negotiation shall be confidential and considered statements made in compromise negotiations within the meaning of the Federal Rule of Evidence 408 and any applicable state law, evidentiary rules or doctrines. The senior executives shall meet within twenty (20) Business Days of the notice, at a time and place mutually acceptable to the senior executives.

14.3 Binding Arbitration. If the senior executives are unable to resolve the dispute within twenty (20) Business Days of their first meeting or such later date as the senior executives may mutually agree, then the dispute shall be resolved solely and exclusively by binding arbitration. The following arbitration procedures will be used absent agreement of the Parties to different procedures for a given arbitration:

(a) The dispute shall be finally settled by binding arbitration, before a single arbitrator, in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect, except as modified herein.

(b) The Party seeking relief from the other Party shall prepare and submit a request for arbitration (the "Demand"), which will include statements of the facts and circumstances surrounding the dispute, the legal obligation breached by the other Party, the amount in controversy and the requested relief.

(c) Arbitration shall be held in Columbia, South Carolina. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. §§ 1 et seq.

(d) The arbitrator must be an individual with knowledge and experience in the electric industry, and shall be selected by the Parties or (failing their agreement on an arbitrator) by the AAA in accordance with Rule 11 of the AAA Commercial Arbitration Rules.

(e) The award shall be a reasoned opinion in writing and shall set forth findings of facts and conclusions of law. The award shall be final and binding upon the Parties. The arbitrator shall be authorized in its discretion to grant pre-award and post-award interest at commercial rates. Judgment upon any award may be entered in any court having jurisdiction.

(f) This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in any arbitration proceeding hereunder.

(g) Unless otherwise ordered by the arbitrator, each Party shall bear its own costs and fees, including attorneys' fees and expenses. The Parties expressly agree that the arbitrator shall have no power to consider or award any form of damages barred by this Agreement.

(h) This Section shall not prevent either Party from seeking injunctive or other equitable relief as may be needed to prevent irreparable injury pending the award in any arbitration proceeding hereunder.

(i) The Parties agree to request that a selected arbitrator make best reasonable efforts to complete arbitration in a ninety (90) to one hundred twenty (120) day time period.

ARTICLE XV

MISCELLANEOUS

15.1 Assignment

(a) Except as provided below, neither this Agreement nor the Facility may be assigned, directly or indirectly, in whole or in part by either Party without the prior written consent of the other Party, which shall not be unreasonably withheld. Notwithstanding the foregoing, Buyer may pledge, encumber, or assign this Agreement, in whole or in part, to any Person (including any Affiliate of Buyer) without any restriction; provided, however that any such assignment by Buyer (other than an

assignment to its Affiliate or after which assignment Buyer remains liable hereunder) that gives Seller reasonable grounds for financial insecurity about the ability of Buyer's assignee or successor to perform the obligations of Buyer hereunder shall be subject to the approval of Seller, which shall not be unreasonably withheld, conditioned, or delayed.

(b) Notwithstanding anything else herein to the contrary, subject to prior written consent of Buyer, which shall not be unreasonably withheld, Seller may pledge, encumber, or collaterally assign the Facility (subject to the terms of Section 15.1(c) below), this Agreement, in whole or in part, or the revenues under this Agreement to any Financing Party as security for the applicable financing of the operation of the Facility.

(c) Buyer's consent, which shall not be unreasonably withheld, shall be required for any change in Control over Seller.

(d) Notwithstanding anything else herein to the contrary, Seller shall not, by way of security, charge or otherwise, encumber any interest it has in the Facility unless the secured party (for itself, its successors and assigns) agrees to assume Seller's obligations under this Agreement in the event that such security interest in the Facility is executed upon, enforced or foreclosed upon.

(e) Any purported assignment, pledge, or transfer of this Agreement or the Facility not in compliance with the provisions of this Section 15.1 shall be null and void.

15.2 Notices. Any notice, demand, request, or communication required or authorized by the Agreement shall be delivered either by hand, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

If to Seller: KapStone Charleston Kraft LLC
1000 Abernathy Road NE
Atlanta, GA 30328
Attention: Chief Financial Officer

With copies to: KapStone Charleston Kraft LLC
1000 Abernathy Road NE
Atlanta, GA 30328
Attention: Executive Vice President & General Counsel

and

KapStone Charleston Kraft LLC
5600 Virginia Ave.
North Charleston, SC 29406
Attention: General Manager

If to Buyer: South Carolina Electric & Gas Company
220 Operation Way, Mail Code P-26
Cayce, SC 29033
ATTN: Power Marketing Manager

With a copy to: South Carolina Electric & Gas Company
220 Operation Way, Mail Code D-308
Cayce, SC 29033
ATTN: General Counsel

The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice. Any such notice, demand, request, or communication shall be deemed delivered on receipt if delivered by hand, the next Business Day after deposit by the sending Party if delivered by overnight courier, and on the third Business Day after deposit by the sending Party if delivered by U.S. mail.

15.3 No Third-Party Beneficiary. No provision of the Agreement is intended to, nor shall it in any way inure to the benefit of, any customer, property owner or any other third party, so as to constitute any such Person a third-party beneficiary under the Agreement, or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any Person not a Party hereto.

15.4 No Dedication. No undertaking by one Party to the other under any provision of the Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public or affect the status of Buyer as a body public and corporate or Seller as an independent individual or entity and not a public utility.

15.5 Integration: Amendment. The Agreement, together with all Attachments, constitutes the entire agreement between the Parties relating to the transaction described herein and supersedes any and all prior oral or written understandings. No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.

15.6 Governing Law. The Agreement is made in the State of South Carolina and shall be interpreted and governed by the laws of the State of South Carolina and/or the laws of the United States, as applicable, without reference to its conflict of laws provisions.

15.7 Relationship of Parties.

(a) The duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. The Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and Buyer or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Seller and Buyer shall not have any

right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

(b) The relationship between Buyer and Seller shall be that of contracting party to independent contractor. Accordingly, subject to the specific terms of the Agreement, Buyer shall have no general right to prescribe the means by which Seller shall meet its obligations under the Agreement.

(c) Seller shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform Seller's obligations under the Agreement, including all federal, state, and local income, social security, payroll, and employment taxes, and statutorily mandated workers' compensation coverage. None of the persons employed by Seller shall be considered employees of Buyer for any purpose; nor shall Seller represent to any Person that he or she is or shall become a Buyer employee, or agent.

15.8 Good Faith and Fair Dealing. The Parties agree to act in accordance with the principles of good faith and fair dealing in the performance of the Agreement.

15.9 Severability. Should any provision of the Agreement be or become void, illegal, or unenforceable, the validity or enforceability of the other provisions of the Agreement shall not be affected and shall continue in force. The Parties will, however, use their reasonable efforts to agree on the replacement of the void, illegal, or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and the Agreement as a whole.

15.10 Cooperation. The Parties agree to reasonably cooperate with each other in the implementation and performance of the Agreement. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under the Agreement.

15.11 Forward Contract. The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Seller and Buyer are "forward contract merchants" within the meaning of the United States Bankruptcy Code.

15.12 Assent Not Waiver of Future Breach. No assent, express or implied, by either Party to any breach of the Agreement by the other Party shall be deemed to be a waiver of any subsequent breach.

15.13 Confidentiality. If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the Facility or the Party's business ("Confidential Information") to the other Party and identifies the same in writing to the receiving Party as provided below, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such

Confidential Information, except in the negotiation and performance of this Agreement, including but not limited to obtaining financing for the Facility. Notwithstanding the above, a Party may provide such Confidential Information to its officers, directors, members, managers, employees, agents, contractors and consultants (collectively, "Representatives"), and affiliates, lenders, and potential assignees of this Agreement, if any. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party discloses Confidential Information. The terms of this Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Section 15.13, except as set forth in Sections 15.14 and 15.15 and for purposes of sections 15.16 and 15.17. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party (except that the receiving Party may keep a copy of the same as required by law). Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Section 15.13 by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of a breach of the provision of this Section 15.13. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 15.13, but shall be in addition to all other remedies available at law or in equity. The terms of this Section 15.13 shall control over the provisions of any previous Confidentiality Agreement executed by and between the Parties with regard to the subject matter hereof.

15.14 Permitted Disclosures. Notwithstanding any other provision in this Agreement to the contrary, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through unlawful acts of the receiving Party, (ii) is required to be disclosed to a Government Agency under applicable law or pursuant to a validly issued subpoena, (iii) is independently developed by the receiving Party or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Government Agency, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall reasonably cooperate with the other Party in efforts to limit the disclosure to the maximum extent permitted by law. In addition, notwithstanding anything else herein to the contrary, nothing herein shall prohibit Buyer from disclosing any information (whether or not Confidential Information) to any Federal and state regulators.

15.15 Goodwill and Publicity. Except as otherwise provided herein, neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making prepared public announcements related to the execution and existence of this Agreement, and the

operation of the Facility, and each Party shall have the right to promptly review and comment upon, and approve (which shall not be unreasonably denied or delayed) any publicity materials by the other Party that refer to, or that describe any aspect of, this Agreement or the Facility. Neither Party shall make any press release or prepared public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party which shall be in the discretion of such Party. Without limiting the generality of the foregoing, all prepared public statements must accurately reflect the rights and obligations of the Parties under this Agreement.

15.16 Filing Agreement with the Public Service Commission of South Carolina. This Agreement is required to be filed by Buyer with the SCPSC within ten (10) days of its execution. Buyer and Seller understand and agree that, for purposes of this filing, this Agreement will be filed with the SCPSC in unredacted form. Buyer shall use commercially reasonable efforts to satisfy such filing requirement and shall provide Seller with written notice promptly following the satisfaction of such filing requirement.

15.17 Review by SCPSC. This Agreement is subject to review by the SCPSC upon complaint by either Party, or pursuant to its own motion, and the terms herein may be modified in whole or in part or declared null and void by the SCPSC.

(a) Provision of Information to the SCPSC. Buyer reserves the right to provide to the SCPSC, upon request, information pertaining to this Agreement including, but not limited to records of the Facility's generation output and Buyer's purchases thereof, including copies of monthly statements of power purchases and data from meters and telemetering equipment installed at the Facility. Buyer will advise Seller of the furnishing of any information.

(b) Cooperation with the SCPSC. Buyer and Seller agree to work together in good faith to support the filing of this Agreement with the SCPSC, including providing response to any information requests, data requests, and/or requests for interviews, and participation in any investigation, hearing, and/or appeal, as applicable.

(c) Termination. In the event that the SCPSC issues an order or other such regulatory directive with modification, suspension, investigation or other condition that has an adverse effect on either Party, then the Parties agree to negotiate in good faith for a period of thirty (30) days an amendment to this Agreement that complies with such SCPSC order or directive. If the Parties cannot reach an agreement, either Party may terminate this Agreement upon ten (10) days prior written notice to the other Party and neither Party shall have any obligation, duty or liability to the other arising hereunder under any claim or theory whatsoever except as to costs and balances, any other obligations incurred or accrued prior to the effective date of such termination, and those obligations surviving termination or expiration of this Agreement as described in Section 15.18.

15.18 Survival. The termination of this Agreement shall not discharge any Party from any obligation it owes to the other Party hereunder by reason of any transaction, cost, loss, damage, expense or liability which shall occur or arise (or the circumstances, events or bases which shall occur or arise) prior to or as a consequence of such termination. It is the intent of the Parties hereby that any obligation owed (whether the same shall be known or unknown at the termination of this Agreement or whether the circumstances, events or bases of the same shall be known or unknown at the termination of this Agreement), including, but not limited to, an indemnification obligation arising under Section 12.1 from circumstances occurring prior to termination but not known at termination, will survive the termination of this Agreement. In addition, the provisions within Articles XI, XII, XIV, and XV (and any provisions or definitions referenced therein necessary to the administration of such Articles) shall survive the termination of this Agreement. In addition, for twenty-four (24) months after the expiration or termination of this Agreement, all audit rights of Buyer herein shall survive such termination and expiration of this Agreement. Seller shall retain any and all documents (including, without limitation, paper, written, and electronic) and/or any other records relating to this Agreement and the Facility for a period of twenty-four (24) months after the termination or expiration of this Agreement.

15.19 Change in Law.

(1) Regulatory Event. A "Regulatory Event" means one or more of the following events:

- (i) Illegality. After the Effective Date, due to the adoption of, or change in, any applicable law or in the interpretation thereof by any Government Agency with competent jurisdiction, it becomes unlawful for a Party to perform any obligation under this Agreement.
- (ii) Adverse Government Action. After the Effective Date, there occurs any adverse change in any applicable law (including material change regarding a Party's obligation to sell, deliver, purchase, or receive the Net Energy) and any such occurrence renders illegal or unenforceable any performance or requirement under this Agreement.

(2) Process. Upon the occurrence of a Regulatory Event the Party affected by the Regulatory Event shall notify the other Party in writing of the occurrence of a Regulatory Event, together with details and explanation supporting the occurrence of a Regulatory Event. Upon receipt of such notice, the Parties agree to undertake, during the thirty (30) days immediately following receipt of the notice, to negotiate such modifications to reform this Agreement to remedy the Regulatory Event and attempt to give effect to the original intention of the Parties. Upon the expiration of the 30-day period, if the Parties are unable to agree upon modifications to the Agreement that are acceptable to each Party, in each Party's sole discretion, then either Party will have the right, in such Party's sole discretion, to terminate this Agreement with a 30-day advance written notice. In the event of any termination pursuant to this Section, neither Party shall have any obligation, duty or

liability to the other arising hereunder under any claim or theory whatsoever except as to costs and balances, any other obligations incurred or accrued prior to the effective date of such termination, and those obligations surviving termination or expiration of this Agreement as described in Section 15.18.

15.20 Mobile-Sierra. Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party in seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of this Agreement proposed by a Party, a non-party or the FERC acting sua sponte shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008).

15.21 Safety. With respect to its operation of the Facility, Seller shall comply with all applicable federal, state, and local laws relating to occupational health and safety, including OSHA, and shall be legally responsible for any and all claims that may arise from its operation of the Facility.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused the Agreement to be duly executed as of the day and year first above written.

Seller:

KapStone Charleston Kraft LLC,
a Delaware limited liability company

By: 

Name: John D. Stake

RCM

Title: Senior Vice President and Treasurer

Buyer:

South Carolina Electric & Gas Company,
a South Carolina corporation

By: 

Name: Daniel F. Kassiss



Title: Vice President, Customer Relations & Renewables

ATTACHMENT A – Description of Facility

ATTACHMENT B – Schedule of Rates

ATTACHMENT A

Description of Facility

1. Site

See Site Plan provided as Exhibit A.

2. Structure

KapStone Charleston Kraft LLC operates a cogeneration facility at its North Charleston paper mill. The generator is capable of producing 99.2 MW-AC at 13.8 kV. The power is stepped up to 115 kV through a step-up transformer prior to delivery to the SCE&G substation. The turbine is supplied with 1500 psig steam from a CE VU-40 combination coal and biomass boiler and a Babcock and Wilcox black liquor process recovery boiler. The turbine is a back pressure unit and runs balanced to the steam demands of the paper production equipment at the North Charleston facility.

3. Equipment

- (i) Cogeneration electric generating facility: see approved One-Line
- (ii) Technology: see Section 2 above of this Attachment A.
- (iii) Nameplate Capacity: 99.2 MW-AC
- (iv) Monitoring/Data Logging: There is no additional monitoring or data logging aside from the SCE&G installed meters that will be available to SCE&G.
- (v) Operating Voltage (kV): 115 kV at the Point of Interconnection as specified in the Interconnection Agreement
- (vi) Project Controls: To be implemented as specified in the Interconnection Agreement.

4. Interconnection

The Facility will interconnect to the existing Westvaco (presently KapStone) substation at the generator side of Switch #5470 pursuant to the Interconnection Agreement that was fully executed as of December 20, 2018.

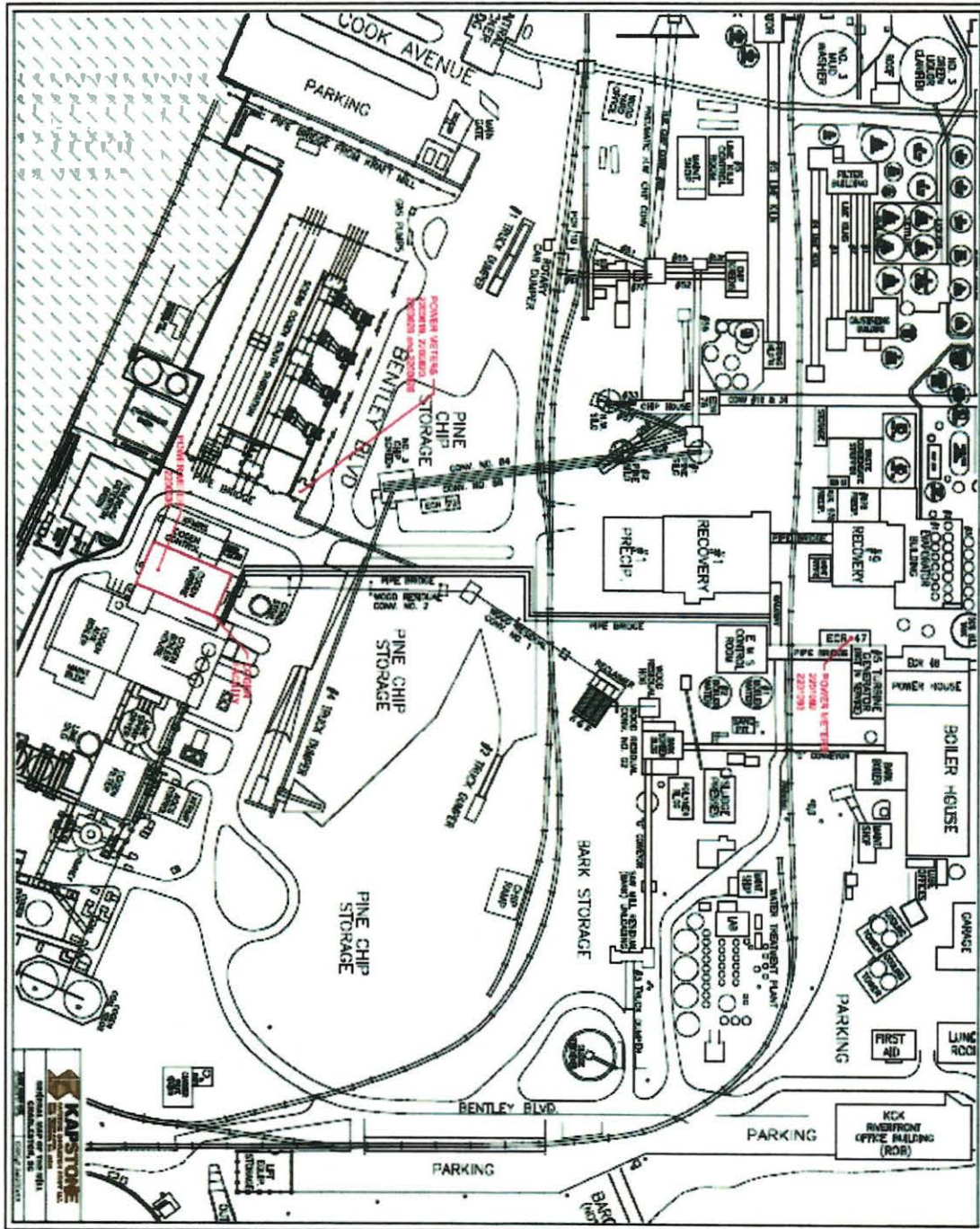
5. Facility Security

Details provided to Buyer prior to execution of this Agreement

6. Metering

Utility Meter provided by SCE&G.

Exhibit A
Site Plan



ATTACHMENT B**Schedule of Rates****Net Energy Rate:**

The Net Energy Rate shall be equal to the Energy Rates in Seller's currently effective RATE PR-1 (or successor tariff rate) adjusted, as appropriate, to reflect delivery of Net Energy at the operating voltage specified in Attachment A of this Agreement.

The Net Energy Rate per kWh contained herein will be effective for the period beginning on May 7, 2018 and shall remain in effect until the effective date of the next revision to RATE PR-1 (or successor tariff rate). This Attachment B will be updated as required to reflect currently effective RATE PR-1 (or successor tariff rate).

Buyer shall pay Seller the following rates per kWh for Net Energy delivered by the Seller at the Delivery Point. These rates shall be applied to the hourly integrated values for Net Energy delivered, rounded to the nearest whole kWh.

	<u>Summer Months</u> June through September	<u>Winter Months</u> October through May
1. On-Peak	\$0.03056/kWh	\$0.03256/kWh
2. Off-Peak	\$0.02728/kWh	\$0.03117/kWh

Determination of On-Peak and Off-Peak Hours

On-Peak Hours and Off-Peak Hours will be determined by the method specified in Seller's currently effective RATE PR-1 (or successor tariff rate).

Revisions to RATE PR-1 or Successor Rate

This Attachment B will be revised as required going forward if the structure of RATE PR-1 changes or there is a successor tariff rate in lieu of RATE PR-1.

Seller Charge:

Seller shall pay the following Seller Charge each monthly billing period: \$45.00